

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

-----X  
ELIZABETH GOODWIN, As : Case No. 1:15-cv-00210  
Administrator of the Estate : Cleveland, Ohio  
of BRIAN GARBER, :  
Plaintiff, : Thursday, February 21, 2019  
9:06 a.m.  
:  
v. : **VOLUME 3 - JURY TRIAL**  
:(Pages 460 - 551)  
RICHLAND COUNTY, OHIO, et :  
al., :  
Defendants. :  
-----X

TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM H. BAUGHMAN, JR.

UNITED STATES MAGISTRATE JUDGE

Court Reporter: Donnalee Cotone, RMR, CRR, CRC  
Realtime Systems Administrator  
United States District Court  
801 West Superior Avenue  
Court Reporters 7-189  
Cleveland, Ohio 44113  
216-357-7078  
donnalee\_cotone@ohnd.uscourts.gov

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 APPEARANCES:

2  
3 On behalf of Plaintiff Elizabeth Goodwin, As  
4 *Administrator of the Estate of Brian Garber:*

5 **TERRY H. GILBERT, ESQ.**  
6 **JACQUELINE C. GREENE, ESQ.**  
7 Friedman & Gilbert  
8 55 Public Square, Suite 1055  
9 Cleveland, Ohio 44113  
10 216-241-1430  
11 tgilbert@f-glaw.com  
12 greene@f-glaw.com

13  
14 On behalf of Plaintiff Elizabeth Goodwin, As  
15 *Administrator of the Estate of Brian Garber:*

16 **CHANCE G. DOUGLAS, ESQ.**  
17 24100 Chagrin Boulevard  
18 Suite 280  
19 Cleveland, Ohio 44122  
20 216-292-5200  
21 cdouglas@hoffmanlegalgroup.com

22 On behalf of Defendant Richland County, Ohio, et al.:

23 **DANIEL T. DOWNEY, ESQ.**  
24 **MELANIE J. WILLIAMSON, ESQ.**  
25 7775 Walton Parkway, Suite 200  
New Albany, Ohio 43054  
614-221-1216  
ddowney@fisheldowney.com  
mwilliamson@fisheldowney.com

26  
27 ALSO PRESENT: Deputy Raymond Jeffrey Frazier  
28 Deputy Andrew Knee  
29 Deputy James Nicholson  
30

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1 MORNING SESSION, Thursday, February 21, 2019

2 DEPUTY CLERK: All rise.

3 - - -

4 (Proceedings reconvened at 9:06 a.m.)

5 (In Open Court - Jurors Not Present)

6 (Defendant Present)

7 - - -

8 DEPUTY CLERK: Please be seated.

9 THE COURT: I understand there's some matters  
09:06:21 10 that counsel would like to discuss before the jury comes in?

11 MR. GILBERT: Yes. Just briefly, Judge.

12 We want to make sure that in the case of the  
13 defendants that we're going to hear this morning, that  
14 matters that had been ruled inadmissible in the pretrial  
09:06:40 15 order pursuant to the motions in limine are adhered to.

16 And specifically, there is a Deputy Berry who would be  
17 called today who was at the scene at the time of the  
18 shooting. But he also -- from our deposition, we learned  
19 that there was some kind of incident the day before,  
09:07:05 20 where --

21 MR. DOWNEY: We're not going to call  
22 Deputy Berry.

23 MR. GILBERT: Okay.

24 MR. DOWNEY: We made that decision late last  
09:07:12 25 night.

1 MR. GILBERT: All right. Thank you.

2 Also, are you calling Beasley?

3 MS. WILLIAMSON: Yes, we are.

4 MR. GILBERT: Okay. Beasley, apparently, had  
09:07:22 5 contact with Brian sometime previously to the incident. So  
6 we would like -- we don't think that that is relevant or  
7 admissible because that information was not conveyed to the  
8 three officers who engaged in the shooting at the time.

9 And the Court had previously made it very clear  
09:07:46 10 that -- and it doesn't go to damages either.

11 So the Court has made it very clear that anything that  
12 the shooting officers knew would be allowed at the time that  
13 they used deadly force, but anything that comes out  
14 separately that they didn't know should not be allowed in  
09:08:08 15 the testimony.

16 Plus, when that happened with Beasley, he was -- Brian  
17 was a juvenile. So it was many years earlier, from what I  
18 understand.

19 So we would want to make sure that -- and I don't want  
09:08:22 20 to just stand up and start objecting if that comes up. I  
21 want to know where we stand on that at this point.

22 Also --

23 THE COURT: All right. Well, we'll go through  
24 his whole list.

09:08:34 25 MS. WILLIAMSON: Okay.

1 MR. GILBERT: Do you want me to finish the --

2 THE COURT: Well, go ahead.

3 MR. GILBERT: Okay.

4 And then we have a problem with what Sheldon and --

09:08:44 5 Sheriff Sheldon or Masi -- I forget if he's a captain.

6 MR. DOWNEY: We decided not to call them last  
7 night, too.

8 MR. GILBERT: What's that?

9 MR. DOWNEY: We're not calling them.

09:08:55 10 MR. GILBERT: Okay.

11 MR. DOWNEY: Yeah. We went through the list  
12 late last night.

13 THE COURT: All right. So we have the matter  
14 of Deputy Berry.

09:09:01 15 Is that his title right now?

16 MS. WILLIAMSON: It's Officer Beasley.

17 MR. DOWNEY: He's not going to be called.

18 THE COURT: He's not going to be called?

19 MS. WILLIAMSON: No. Officer Beasley.

09:09:10 20 THE COURT: Officer --

21 MS. WILLIAMSON: Officer Beasley.

22 THE COURT: Beasley. All right.

23 Officer Beasley and some contact that he had with the  
24 decedent a number of years before.

09:09:20 25 Are you going to go into that?

1 MS. WILLIAMSON: No, Your Honor. We intend to  
2 stick to the events of the day.

3 THE COURT: The events of the day?

4 Very well. Okay.

09:09:27 5 MR. GILBERT: All right.

6 THE COURT: No problems then.

7 MR. DOWNEY: The first three issues of the  
8 day, you won.

9 We were really working late on it last night and  
09:09:38 10 calling people and -- yeah.

11 THE COURT: All right. Okay.

12 MR. GILBERT: Sorry to waste the time with the  
13 Court.

14 THE COURT: Well, better to ask and to know  
09:09:44 15 than --

16 MR. GILBERT: Right.

17 THE COURT: -- than to have to deal with it  
18 later.

19 All right. So are both sides ready for the jury to  
09:09:53 20 come in?

21 MR. GILBERT: We are, Your Honor.

22 THE COURT: All right.

23 Mr. DeVan, please bring in the jury.

24 DEPUTY CLERK: All rise for the jury.

09:11:29 25 (The jury entered the courtroom.)

1 DEPUTY CLERK: Please be seated.

2 THE COURT: Ladies and gentlemen of the jury,  
3 yesterday plaintiff's concluded their case in chief, and  
4 today we will hear the evidence that will be presented by  
09:11:48 5 the defendant in this case.

6 Thank you for your attention in this trial so far.  
7 And if you're -- hopefully we have this temperature problem  
8 under control. But if -- again, if there's anything that we  
9 can do to make you more comfortable, if you have any  
09:12:10 10 concerns, please let us know.

11 You may proceed.

12 MR. DOWNEY: Thank you, Your Honor.

13 Defense would call Lieutenant James Nicholson.

14 DEPUTY CLERK: Would you please raise your  
09:12:41 15 right hand.

16 Do you solemnly swear that your testimony in this case  
17 will be the truth, the whole truth, and nothing but the  
18 truth, so help you God?

19 THE WITNESS: I swear.

09:12:46 20 DEPUTY CLERK: Please have a seat.

21 THE WITNESS: Thank you.

22 DIRECT EXAMINATION OF JAMES NICHOLSON

23 BY MR. DOWNEY:

24 Q. Thank you, sir.

09:12:55 25 Can you please state your current rank to the ladies



1 and gentlemen of the jury.

2 A. Yes.

3 I'm a lieutenant in the Richland County Sheriff's  
4 Office.

09:13:02 5 Q. And how long have you worked at the Richland County  
6 Sheriff's Office?

7 A. This is going on my 25th year.

8 Q. Lieutenant Nicholson, have you worked for other  
9 agencies?

09:13:13 10 A. Yes, I have. The United States Army, as a military  
11 policeman in the National Guard.

12 Q. Lieutenant Nicholson, briefly, I'd like you to share  
13 with the jury some of the commendations and awards you  
14 received from the military.

09:13:27 15 A. Yes, sir.

16 I received a Special Service Award from Mississippi  
17 for Hurricane Katrina.

18 I also received an Ohio Basic Training Ribbon for  
19 Ohio.

09:13:37 20 I also received the Ohio Award of Merit. This is for  
21 duties and things that we've done throughout the years of my  
22 career with the Ohio Army National Guard.

23 I also received the Ohio Faithful Service Ribbon with  
24 four oak leaf clusters. And an oak leaf cluster means I've  
09:13:55 25 received it more than once. It's like a Good Conduct

1 Ribbon. Basically, a good conduct award.

2 I also received Ohio Special Service Award for  
3 Lucasville prison riot and the Cincinnati floods.

4 I also received the Ohio Commendation Award, and I  
09:14:11 5 also received the Ohio Distinguished Service Award for 20  
6 years of service for the Ohio National Army Guard.

7 I also received the Overseas Reserve Component  
8 Training Ribbon. Overseas Service Ribbon for going  
9 overseas.

09:14:27 10 I also received the Army Service Ribbon for joining  
11 the service.

12 I also received the Noncommissioned Officer  
13 Professional Development Ribbon. What you do is, you get a  
14 ribbon. It's got a numerical 3 on it. Every numerical  
09:14:41 15 stands for a school that I've gone to to up my rank.

16 And then I've also received a Humanitarian Ribbon  
17 with -- it's a medal, actually, with a Number 1 device.

18 I received Global War on Terrorism Medal. Global war  
19 on Terrorism Expeditionary Medal. Iraq Campaign Medal with  
09:15:01 20 two bronze stars for the two years I spent in Iraq. That  
21 would have been in 2003 to '04, 2008 to '09.

22 I also received a National Defense Service Ribbon with  
23 two bronze stars.

24 I also received the Ohio Reserve Component Achievement  
09:15:19 25 Medal with four oak leaf clusters.

1           And I also received the Army Achievement Medal with  
2           two oak leaf clusters.

3           The Army Commendation Medal with two oak leaf clusters  
4           and a bronze star.

09:15:33 5           Q.     And how long were you in the military,  
6           Lieutenant Nicholson?

7           A.     20 years.

8           Q.     What was your rank when you retired?

9           A.     I retired as a company first sergeant.

09:15:42 10          Q.     Can you tell the ladies and gentlemen of the jury  
11          about the positions you've held with the Richland County  
12          Sheriff's Office over the years?

13          A.     Yes, I can.

14                 I was a SWAT officer. I was on SWAT for 15 years.

09:15:53 15          I also am a certified instructor thorough OPOTA that  
16          the department put me through.

17                 I'm also -- on SWAT, I was a tool entry man, and then  
18          I became a point man. Then I became a submachine gun  
19          operator, sniper, and then team leader.

09:16:12 20          And then I'm also -- with the sheriff's office I  
21          do -- I'm a meth tech. I break down meth labs. So I travel  
22          both throughout Richland County, Morrow, Knox, Huron,  
23          adjoining counties. And I help them, and we break down  
24          labs.

09:16:26 25          I'm also a certified armer with the M&P Smith & Wesson

1 .40 caliber pistol, and an armer for the AR rifle -- AR15  
2 rifle, Smith & Wesson.

3 Q. If you would, please tell, briefly, the ladies and  
4 gentlemen of the jury about any commendations or awards you  
09:16:42 5 received through your police officer career.

6 A. Yes, sir.

7 The awards I've received are on my chest now. The  
8 yellow and white award, it has three stars in it. The stars  
9 means you've received it more than ones. That is a  
09:16:56 10 Commendation Award. You receive those for individual acts  
11 or as a unit.

12 The other award that I received is a Safe Driving  
13 Award for 20 years safe driving.

14 And then the next one I received is a Deputy of the  
09:17:08 15 Year Award. That's given out to the deputy with very good  
16 activity. Does a lot of car stops. Handles a lot of  
17 reports. And overall performance among his peers, stands  
18 out.

19 The other award I received is a Certificate of Merit  
09:17:24 20 through the sheriff's office. A certificate of merit means  
21 that's for items that I've recovered. Large quantities of  
22 money or property.

23 And then the next thing I received is -- would be my  
24 Office Citation. An Office Citation is a red and white, and  
09:17:42 25 it also has three stars. That's for on-view felony arrest,

1 meaning that you kind of put yourself in harm's way. And  
2 I've caught people during burglaries, during robberies, or  
3 in a process of a felony of theft.

4 And the last thing I received is a blue ribbon from  
09:18:00 5 Mansfield Police Department. And that's for a Medal of  
6 Honor. That's for a 27-hour standoff with an individual  
7 regarding a SWAT incident.

8 Q. Thank you, Lieutenant Nicholson.

9 A. You're welcome.

09:18:13 10 Q. Have you had CIT training?

11 A. Yes, I have.

12 Q. Would you tell the ladies and gentlemen of the jury  
13 what CIT training is.

14 A. CIT training, it's Critical Incident Training. It's  
09:18:21 15 to help an officer be more familiar with people with mental  
16 illnesses, or to deal with someone who is suffering some  
17 type of mental illness.

18 Q. And what are some of the skills that you developed  
19 through CIT training?

09:18:40 20 A. Basically, how to deescalate. How to talk to  
21 individuals.

22 Q. Now -- and I don't want to repeat all of your  
23 testimony from yesterday, but I would like to give the jury  
24 an understanding of how many officers are on your shift.

09:18:53 25 A. At that particular date and time, would be five.

1 Q. And how big is the area that you patrol?

2 A. Slightly over 500 square miles.

3 Q. And were you the shift supervisor?

4 A. Correct, I was.

09:19:08 5 Q. And can you tell the ladies and gentlemen of the jury  
6 what that means.

7 A. Shift supervisor, I'm responsible for the officers  
8 when they come in. I sign them in for roll call. I read  
9 them pass on. I see to it whatever assignments that they  
09:19:21 10 currently have going, that they continue on those  
11 assignments. I also assign them zones within the county  
12 that they're to patrol in.

13 I make sure they take out civil papers for the court.  
14 And I also see to it that anything we had previous from the  
09:19:34 15 last shift, that we get that information. I pass that on,  
16 the same I would do for another oncoming shift when they  
17 come in.

18 Q. Now, generally, Lieutenant Nicholson, I would like you  
19 to tell the jury how often are you dispatched or do you  
09:19:51 20 receive domestic violence calls.

21 A. Domestic violence calls are prevalent. We get those  
22 quite a bit. Sometimes two, three a week.

23 Q. How often are there firearms or reports of guns on the  
24 domestic violence calls, generally?

09:20:06 25 A. Generally? Mostly -- mostly all the calls I go on.

1 Q. And I'd like you to -- you heard about -- you've heard  
2 a little bit about tactical plans when Mr. Gilbert, I think,  
3 questioned you, correct?

4 A. Yes, sir.

09:20:20 5 Q. Can you tell the ladies and gentlemen of the jury  
6 whether you typically do tactical plans on a domestic  
7 violence call when there may be a gun present?

8 A. Not necessarily. We don't do tactical plans on --

9 Q. Why is that?

09:20:33 10 A. Just for the fact there's usually anywhere between  
11 five to six of us, or less, handling a call. We respond to  
12 the call as quickly as possible. We try to make the contact  
13 with individuals as quickly as possible, and try to  
14 deescalate as quickly as possible.

09:20:48 15 Q. Now, in the times that you've been called out for  
16 domestic violence calls, do you give commands to the  
17 subjects, generally?

18 A. Yes, I do.

19 Q. Okay. Have you ever had an incident where you've  
09:21:01 20 given commands during a domestic violence call when there  
21 may be a gun, where the subject did not comply?

22 MR. GILBERT: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: Not to that incident that night.

09:21:18 25 BY MR. DOWNEY:

1 Q. And would you tell the ladies and gentlemen of the  
2 jury what typically happens on a domestic violence call.

3 A. Domestic violence call, we try to get there as quickly  
4 as possible. We try to deescalate and find out who the  
09:21:29 5 aggressor is. We separate and we communicate with the  
6 individuals that are there or any witnesses that are there  
7 to get as much information from them as possible.

8 Q. And what decisions do you make, typically, on a  
9 domestic violence call?

09:21:43 10 A. The decisions that are made are prevalent. Has to do  
11 with the primary aggressor, and possibly who is going to be  
12 arrested, and taking statements and filling out information  
13 and packets.

14 Q. Now, changing up just a bit.

09:21:57 15 Can you tell the ladies and gentlemen of the jury how  
16 long you've worked with Deputy Frazier?

17 A. Going on almost 20 years.

18 Q. And was he on your shift on March 16th, 2014?

19 A. Correct, he was.

09:22:10 20 Q. Do you trust Deputy Frazier?

21 A. Yes, I do. I trust him with my life.

22 Q. Why do you trust him?

23 A. The time that we've spent together, both with the  
24 sheriff's deputy and on SWAT, he's been my point man on many  
09:22:25 25 operations, and just working with him in general. He has a



1 good work ethic.

2 Q. Now, changing up to the point of the incident.

3 Can you tell the jury where Deputy Frazier stationed  
4 himself in the bedroom that contained Brian Garber?

09:22:40

5 A. Yes. Deputy Frazier, he stepped in past Deputy Knee,  
6 about 1 foot, and then took one step, about, approximately,  
7 1 foot to the left, just inside the doorway.

8 Q. Now, what were you thinking at that time?

09:22:56

9 A. At that particular time, I'm trying to deescalate  
10 Brian. I'm trying to talk him down. Trying to get him to  
11 listen to my commands.

12 Q. Did you perceive Brian Garber as a deadly threat?

13 A. Absolutely.

14 Q. Why?

09:23:08

15 Tell the jury.

16 A. He perceived a deadly threat due to the fact that he  
17 had this -- what looked to be a firearm under his shirt,  
18 pointing it directly at us.

09:23:23

19 Q. Why didn't you discharge your gun when you first came  
20 into contact with Brian Garber?

21 A. I wanted to deescalate. I wanted to talk to him. I  
22 wanted to communicate with him, and do anything I could to  
23 save his life.

09:23:33

24 Q. Can you tell the ladies and gentlemen of the jury how  
25 many times you've discharged your weapon in the line of duty

1 as a police officer?

2 A. Once.

3 Q. Was it this incident?

4 A. It was that incident.

09:23:43 5 Q. Now, I think Mr. Gilbert also asked you about sounds.

6 You testified that the sound in a small room can be

7 deceptive; is that correct?

8 A. Correct.

9 Q. Okay. Can you explain to the ladies and gentlemen of  
09:23:55 10 the jury, where the sound came from prior to the shooting

11 with Brian Garber.

12 A. Yes, sir.

13 When I heard the sound, it came towards me. I'm  
14 standing right there at the door frame. So it came towards  
09:24:07 15 me from his position.

16 Q. Can you tell the ladies and gentlemen of the jury  
17 about other sounds that you heard as well?

18 A. Yes. I heard -- as soon as I heard that sound, I  
19 heard Deputy Frazier and Deputy Knee fire almost  
09:24:25 20 simultaneously. Not, like, together, but almost  
21 simultaneously. I was a little bit behind them, and that's  
22 when I fired.

23 Q. Did you say that was when you fired?

24 A. Excuse me?

09:24:37 25 Q. I'm sorry. I didn't hear you.

1 A. What did you say?

2 Q. Did you say that was when you fired?

3 A. Correct.

4 Q. Okay.

09:24:43 5 Can you tell the jury a little bit about what happened  
6 with your magazine?

7 A. Yeah. I have pretty big hands. So when I -- when  
8 drew my weapon up and I fired, at some point in time, I hit  
9 my magazine release, which protrudes out of the Smith &  
09:24:59 10 Wesson a little bit, and it just fell right out of the  
11 magazine well of the gun.

12 Q. Now, Lieutenant Nicholson, are you familiar with guns  
13 and what they look like?

14 A. Yes, I am, sir.

09:25:10 15 Q. Can you tell that to the jury. Explain it to them.

16 A. Yes.

17 Handguns, they come in different shapes and sizes  
18 regarding revolvers and automatics. You either load them  
19 through the side, or underneath, with a magazine. Mostly,  
09:25:25 20 the handguns. And they're approximately 6 to 8 inches in  
21 length, depending on what type of system it is.

22 Q. Now, Lieutenant Nicholson, have you ever attempted to  
23 influence the statements of other officers regarding any  
24 incident?

09:25:39 25 A. No, I have not.

1 Q. Okay. Can you tell the ladies and gentlemen of the  
2 jury what happened in the kitchen of Matthew Garber's  
3 residence following the shooting?

4 A. Yes, sir. We had just come down into the kitchen. It  
09:25:52 5 was after just a pretty stressful incident. Deputy Knee had  
6 just started working on a report to finish the previous  
7 report from the first call, and had talked with  
8 Deputy Frazier reference to him possibly being hit by an  
9 object, and looking at him and his uniform.

09:26:09 10 And I had mentioned to him that I -- when I walked  
11 over to Brian, I did not, at that time, see a gun, and I  
12 believed it to be a Glock.

13 Q. Lieutenant Nicholson, was any officer on your shift  
14 disciplined for the events that occurred on  
09:26:25 15 March 16th, 2014?

16 MR. GILBERT: Objection.

17 THE COURT: Sustained.

18 MR. DOWNEY: Your Honor, if I could just have  
19 a moment.

09:27:08 20 No additional questions at this time, Your Honor.

21 THE COURT: Thank you, Mr. Downey.

22 Cross-examination?

23 MR. GILBERT: Thank you.

24

25

1 CROSS-EXAMINATION OF JAMES NICHOLSON

2 BY MR. GILBERT:

3 Q. Good morning, Lieutenant.

4 A. Good morning.

09:27:26 5 Q. Just a few questions.

6 We've heard from you twice in this trial. So I'll try  
7 to be limited in what I ask you.

8 I want to make it very clear.

9 You never saw Brian pull up his shirt; is that right?

09:27:41 10 MR. DOWNEY: Objection, Your Honor. Beyond  
11 the scope.

12 THE COURT: Overruled.

13 THE WITNESS: Correct, I did not.

14 BY MR. GILBERT:

09:27:48 15 Q. You never saw him lean forward and extend his right  
16 hand?

17 A. Correct, I did not.

18 Q. You never saw him pull out from under his shirt an  
19 object that appeared to be a firearm; is that true?

09:28:02 20 A. That's true.

21 Q. You never saw a dark object in his hand, did you?

22 A. I did not.

23 Q. You never saw him move his arm; is that right?

24 A. Not his arms, just the transitioning --

09:28:15 25 Q. I'm just asking the arms right now.

1 A. Mm-hmm. Not his arm.

2 Q. You didn't see Brian Garber throw anything, did you?

3 A. I did not.

4 Q. You shot because you heard the bang, correct?

09:28:29 5 A. Correct.

6 Q. And it was a very loud bang?

7 A. Correct.

8 Q. And you were absolutely -- in your mind, you were sure  
9 that that was a gunshot?

09:28:44 10 A. Correct.

11 Q. You've told the jury all the training you've had, all  
12 the experiences you had. That you're an instructor. You  
13 know what a gunshot sounds like, right?

14 A. I do.

09:28:57 15 Q. And you know in this case, there was no gun?

16 A. I do now, yes.

17 Q. Okay. And you didn't feel the need to shoot until you  
18 heard that bang?

19 A. Correct.

09:29:08 20 Q. All right. So while there was a tense situation for  
21 45 seconds to 50 seconds, you didn't feel the need to shoot  
22 until you heard the bang, right?

23 A. Correct.

24 Q. And as you said, Knee and Frazier both were shooting  
09:29:27 25 before you?

1 A. Just a fraction before me, yes.

2 Q. And you, after the scene -- after the shooting, went  
3 up to Brian Garber to look at the -- and you looked at the  
4 bed, you looked at his body, and you did not see a remote;  
09:29:50 5 is that correct?

6 A. Correct. I don't recall it.

7 MR. GILBERT: No further questions.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION OF JAMES NICHOLSON

09:29:58 10 BY MR. DOWNEY:

11 Q. Just to be clear for the jury, Lieutenant Nicholson.  
12 Did you perceive Brian Garber as a deadly threat?

13 A. Yes, I did.

14 MR. GILBERT: Objection. Asked and answered.

09:30:17 15 THE COURT: Overruled.

16 MR. DOWNEY: Thank you, Lieutenant.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you.

09:30:38 20 THE COURT: You may call your next witness.

21 MR. DOWNEY: Thank you, Your Honor.

22 Matthew Garber.

23 DEPUTY CLERK: Will you please raise your  
24 right hand, please.

09:30:56 25 Do you solemnly swear that your testimony in this case

1 will be the truth, the whole truth, and nothing but the  
2 truth, so help you God?

3 THE WITNESS: I do.

4 CROSS-EXAMINATION OF MATTHEW D. GARBER

09:31:02 5 BY MR. DOWNEY:

6 Q. Good morning, Mr. Garber.

7 As you know, my name is Dan Downey. I will be asking  
8 you questions today.

9 I'm sorry for your loss, sir.

09:32:33 10 Can you please state your full name for the record.

11 A. Matthew David Garber.

12 Q. And, Mr. Garber, I have questions for you regarding  
13 the events of March 16th, 2014.

14 You interacted with Brian Garber in the bedroom that  
09:32:46 15 he grew up in that evening, correct?

16 MR. GILBERT: Objection. Leading.

17 THE WITNESS: I did -- excuse me?

18 MR. DOWNEY: I think leading is appropriate,  
19 Your Honor.

09:32:58 20 THE COURT: Overruled.

21 BY MR. DOWNEY:

22 Q. Mr. Garber, you interacted with Brian Garber on  
23 March 16th, 2014, in his bedroom, correct?

24 A. Yes.

09:33:05 25 Q. Okay.



1 A. Interacted, yes.

2 Q. And you saw what you believed to be a gun under his  
3 shirt, correct?

4 A. No.

09:33:12 5 Q. Did you share with Cory Momchilov, agent for BCI, that  
6 you thought Brian Garber had a gun under his shirt at the  
7 time that you interacted with him in his bedroom?

8 A. No.

9 MR. DOWNEY: Your Honor, we'd like to queue up  
09:33:35 10 the audio from Exhibit 1013, the interview with BCI. It's  
11 at 22:12:08, and we'd like to play it through 22:13:02.

12 (Video played in open court.)

13 MR. GILBERT: Will you tell us what section  
14 he's going to be --

09:35:02 15 MR. DOWNEY: We were looking for 22:12:08.

16 BY MR. DOWNEY:

17 Q. Mr. Garber, does that refresh your recollection as to  
18 what occurred on March 14th, 2016?

19 A. Yes.

09:36:13 20 Q. And did you advise your wife, Connie Garber, to call  
21 the police after you left that room?

22 A. I told her to see if the police were still -- or  
23 whoever it was across the street were still over there.

24 That's all I said to her. I said, If they're still over

09:36:32 25 there, tell them -- they were looking for Brian -- to come

1 on up.

2 Q. Do you recall Brian Garber telling you, You're not  
3 going to like what I have under my shirt?

4 A. Yes.

09:36:45 5 Q. And you were aware that Brian had hit Connie that  
6 night, correct?

7 MR. GILBERT: Objection. Lack of foundation.

8 THE COURT: Mr. Garber [sic], lack of  
9 foundation. You are aware?

09:37:04 10 MR. GILBERT: Well, I mean, where did he hear  
11 this from? He wasn't in the room. He wasn't at the house  
12 where this incident occurred.

13 THE WITNESS: I don't --

14 THE COURT: Well, Mr. Garber [sic], could you  
09:37:16 15 give us a bit more foundation.

16 MR. DOWNEY: Thank you, Your Honor.

17 BY MR. DOWNEY:

18 Q. Mr. Garber, did you speak to Connie about what  
19 happened across the street at 2435 Mill Run Road?

09:37:26 20 A. No.

21 Q. Did you ever visit 2435 Mill Run Road at the time that  
22 Connie Garber and Sara Knowlton were filling out domestic  
23 packets?

24 A. Yes. I don't know whether they were filling out the  
09:37:38 25 packets, but I was over there at that time.

1 Q. Did you tell them not to press charges?

2 A. Yes.

3 Q. And why did you do that?

4 A. I thought we could handle it internally, within the  
09:37:52 5 family.

6 Q. Okay. And did you learn when you went over to the  
7 Mill Run address, prior to interacting with Brian Garber at  
8 your own home, that he had hit Connie Garber?

9 A. No, I don't think.

09:38:06 10 Q. Did you observe a mark on Connie Garber?

11 A. No.

12 Q. Now, did you think that Brian Garber had a weapon in  
13 the bedroom when you interacted with him at 3400 Mill Run  
14 Road?

09:38:25 15 A. No.

16 MR. DOWNEY: Your Honor, I'd like to show the  
17 witness Defense Exhibit 1012, page 5 of that document.

18 MR. GILBERT: Objection. Your Honor, that's  
19 just -- that's a transcript. He didn't sign that. The  
09:38:47 20 audio would be the better -- this is hearsay.

21 THE COURT: Well, let's go to sidebar.

22 MR. DOWNEY: Sure.

23 THE COURT: Do you have a hard copy of the  
24 exhibit?

09:39:00 25

1 (Discussion held at sidebar, as follows:)

2 THE COURT: I mean, is this the transcript?

3 MR. DOWNEY: Yes.

4 MR. GILBERT: It's not a signed statement.

09:39:24 5 It's -- we don't know how it was prepared.

6 MR. DOWNEY: We can play it. We can play it,  
7 if that's what you wants.

8 THE COURT: You can play it?

9 MR. DOWNEY: It's much more difficult to hear  
09:39:32 10 it than it is to actually see it because the recording is  
11 not a good quality. But we can play it, if the Court is  
12 inclined.

13 THE COURT: You have some concern that this is  
14 not properly --

09:39:42 15 MR. GILBERT: I don't know.

16 THE COURT: -- transcribed?

17 MR. GILBERT: I don't know.

18 MS. GREENE: I mean, I think that the accuracy  
19 is not 100 percent, but, you know, they don't capture every  
09:39:52 20 word.

21 MR. GILBERT: The problem is, he's not hearing  
22 what he -- you're reading something to him. He's not  
23 looking at himself talking.

24 MR. DOWNEY: We could play the recording  
09:40:06 25 and --

1 THE COURT: Why don't you play the recording.  
2 That's the best thing.

3 MR. DOWNEY: -- and then we can show him the  
4 statements with respect to --

09:40:11 5 THE COURT: Right.

6 MR. GILBERT: The statement is hearsay. He'll  
7 say what he says.

8 MR. DOWNEY: We'll play the statement.

9 THE COURT: All right. Play the statement,  
09:40:21 10 and then we'll worry about the document later. All right?

11 MS. WILLIAMSON: Thank you, Your Honor.

12 (End of sidebar discussion.)

13 (Proceedings resumed in open court.)

14 BY MR. DOWNEY:

09:40:44 15 Q. Mr. Garber, we're going to go ahead and play your  
16 statement back to you. Just listen very carefully.

17 MR. DOWNEY: Go ahead.

18 Once again, technical difficulties. We'll be with you  
19 in one minute.

09:41:07 20 (Recording played in open court.)

21 (Pause in proceedings.)

22 BY MR. DOWNEY:

23 Q. Mr. Garber?

24 A. Yes.

09:44:36 25 Q. Did that refresh your recollection as to what you saw

1 in the room with Brian Garber?

2 A. Excuse me?

3 Q. Did that refresh your recollection as to what you saw  
4 in the room with Brian Garber?

09:44:46 5 A. How do you mean?

6 Q. Well, you told Cory Momchilov that you saw the outline  
7 of a gun under his shirt in the statement that you just  
8 heard, correct?

9 A. It -- it -- it was his fist. He had his hand  
09:45:06 10 underneath his shirt. Whether in the twilight, that's -- I  
11 didn't think it was a gun, no, at that time.

12 Q. Okay. And what you told -- you were honest in your  
13 interaction with Special Agent Momchilov, correct?

14 A. That was BCI?

09:45:22 15 Q. Yeah.

16 A. I think so. I -- that was after the shooting. He  
17 asked me whether I thought Brian had a gun. And at that  
18 time, I said yes, because I didn't think trained --

19 Q. And I'm going to ask you another question, sir.

09:45:36 20 A. Okay.

21 MR. GILBERT: Ask the question.

22 MR. DOWNEY: I'm asking on cross-examination.

23 BY MR. DOWNEY:

24 Q. You heard yourself say, "No. It was definitely the  
09:45:44 25 outline of a gun," correct?

1 A. I don't remember that, no. I really -- I can't  
2 remember that.

3 MR. DOWNEY: We're going to play it again.

4 THE WITNESS: At what point was this? After  
09:46:00 5 the shooting?

6 BY MR. DOWNEY:

7 Q. You met with Special Agent Momchilov after the  
8 shooting, sir.

9 (Audio recording played.)

09:46:44 10 BY MR. DOWNEY:

11 Q. That's you in the video, correct, sir?

12 A. I'm not getting a feed.

13 Q. Okay. Is that your voice?

14 A. Yes.

09:46:57 15 Okay.

16 MR. DOWNEY: Play the video.

17 (Video recording played.)

18 MR. GILBERT: Playing the whole video, Judge?

19 THE COURT: Well --

09:48:02 20 MR. GILBERT: I mean . . .

21 THE COURT: -- we have to find it.

22 You asked for it.

23 MR. GILBERT: No, I mean . . .

24 I just want to know if he's playing the whole video.

09:48:13 25 THE COURT: No. He's trying to find the

1 portion of the video that relates to the questions he wants  
2 to ask him.

3 MR. GILBERT: He should know that.

4 THE COURT: You'll let us know, Mr. Downey,  
09:48:28 5 when we get there.

6 MR. DOWNEY: Thank you, Your Honor.

7 (Video played in open court.)

8 MR. DOWNEY: Stop it.

9 BY MR. DOWNEY:

09:49:06 10 Q. Mr. Garber, did you see the video that time?

11 A. Excuse me?

12 Q. Did you see the video that time?

13 A. Yes.

14 Q. Was that you on the video monitor?

09:49:12 15 A. Yes.

16 Q. And was that Special Agent Momchilov from BCI?

17 A. I never knew his name. I recognize him, yes.

18 Q. And were you truthful and honest with him when you sat  
19 there answering questions from a law enforcement officer?

09:49:28 20 A. Yes.

21 MR. DOWNEY: I have no additional questions  
22 for you, Mr. Garber.

23 Thank you.

24

25



1 CROSS-EXAMINATION OF MATTHEW D. GARBER

2 BY MR. GILBERT:

3 Q. Good morning, Mr. Garber.

4 How are you doing today?

09:49:55 5 A. Been better.

6 Q. Okay.

7 I want to put this in the context.

8 You had just learned that your only son had been

9 killed by deputy sheriffs within an hour or two or so of

09:50:10 10 this statement being made, correct?

11 MR. DOWNEY: Objection. Leading.

12 MR. GILBERT: I'm cross-examining him.

13 THE COURT: It's cross-examination.

14 MR. DOWNEY: Beneficiary --

09:50:23 15 THE COURT: Overruled.

16 MR. GILBERT: You called him as your witness.

17 THE COURT: Overruled.

18 BY MR. GILBERT:

19 Q. Is that correct?

09:50:34 20 A. Yes.

21 Q. You were extremely emotionally distraught, were you  
22 not?

23 A. Yes. Absolutely.

24 Q. You were at the house when you heard the gunshots in  
09:50:50 25 the room where your son was in a bed, correct?

1 MR. DOWNEY: Objection. Beyond the scope,  
2 Your Honor.

3 THE COURT: Overruled.

4 BY MR. GILBERT:

09:51:13 5 Q. When you were called in to give a statement --

6 THE REPORTER: I didn't hear an answer to the  
7 last question.

8 THE WITNESS: Correct. I agree.

9 THE COURT: Mr. Garber, could you pull your  
09:51:25 10 chair up a little closer to the microphone.

11 Thank you.

12 BY MR. GILBERT:

13 Q. Did you know what happened inside -- you were not  
14 inside the room when your son was shot, were you?

09:51:43 15 A. No, I was not.

16 Q. You don't know what went on in that room, did you?

17 A. No, I did not.

18 Q. When you were being asked questions, you believed that  
19 your son had a gun, right?

09:51:59 20 A. At what point?

21 Q. Is that because --

22 A. Oh, I see.

23 Q. When you were at the interview, did you believe your  
24 son had a gun because you couldn't believe that your son  
09:52:10 25 would be shot unless he had a gun?

1 A. Absolutely.

2 MR. DOWNEY: Objection. Form. Leading.

3 THE WITNESS: That was my main rationale.

4 MR. GILBERT: I would ask that defense counsel

09:52:23 5 do not interrupt the answer of the defendant -- of the

6 witness.

7 THE COURT: Well, he has a right to object,

8 so . . .

9 MR. GILBERT: Okay. I'm going to ask it

09:52:33 10 again.

11 THE COURT: All right.

12 BY MR. GILBERT:

13 Q. Did you think -- did you think that your son would not

14 have been shot -- that an unarmed person would not be shot

09:52:43 15 unless they had a gun?

16 A. That was my thinking, yes.

17 Q. So then, at that point, you were thinking that he

18 probably had a gun, right?

19 A. Absolutely. I mean, why -- if he was unarmed, I

09:52:56 20 figured what they were going to do is go up and get him,

21 bring him down, and maybe jail him overnight, and try to get

22 him some counseling. That was my understanding going in.

23 Q. You now know that he did not have a gun, right?

24 A. Correct.

09:53:11 25 Q. Okay. And you never knew him to have a gun, did you?

1 A. Never.

2 MR. GILBERT: No further questions.

3 THE WITNESS: That's why I said no before.

4 When I was standing at the bottom of the stairs, at that

09:53:26 5 point, I did think that he had a gun. That BCI -- I thought

6 he must have. I mean, why would they go up there shoot him?

7 So . . .

8 MR. GILBERT: Thank you very much.

9 No further questions.

09:53:55 10 THE COURT: Redirect?

11 RECROSS-EXAMINATION OF MATTHEW D. GARBER

12 BY MR. DOWNEY:

13 Q. Mr. Garber, did you share with Special Agent Momchilov

14 that you thought Brian Garber had committed suicide by cop?

09:54:20 15 A. No. I never -- no.

16 MR. DOWNEY: Your Honor, I would like to use

17 the statement.

18 If not, we'd have to locate it on the video.

19 THE COURT: Any objection to using the

09:54:38 20 statement, or do we have to go to the video, Mr. Gilbert?

21 MR. GILBERT: We'll just use the statement to

22 make it easier.

23 THE COURT: Use the statement? All right.

24 MR. DOWNEY: If we could, Your Honor, I'd like

09:54:58 25 to go to page 9 of Defense Exhibit 1012.

1 MR. GILBERT: Can we approach the bench here?

2 (Discussion held at sidebar, as follows:)

3 MR. GILBERT: What he believes or doesn't

4 believe about what happened in that room is completely

09:55:30 5 irrelevant. You had made a decision to allow prior suicide

6 attempts in. But he -- his belief or opinion whether or

7 not --

8 THE COURT: After the fact?

9 MR. GILBERT: After the fact.

09:55:41 10 -- has no bearing on this case. They never argued

11 that this was a suicide by cop case. They said they were

12 justified in shooting him. Okay?

13 And to bring this into this case at this point in the

14 proceedings, I think, is almost prejudicial that he would

09:56:00 15 even bring that up. It's beyond the scope of

16 cross-examination. It's beyond the scope of direct

17 examination.

18 MR. DOWNEY: It's not. My recollection is

19 that Mr. Gilbert asked Mr. Garber about what his thought

09:56:14 20 process was, what was happening, and what he thought

21 happened, and that he was surprised the officers would shoot

22 someone who wasn't armed. And that that informed his

23 decision on how he talked to Cory Momchilov after the act.

24 So, of course, we get to get in what he thought and

09:56:29 25 what he said to Mr. Momchilov, because right now, it's

1 hanging out there what his opinion and what his belief is,  
2 which was over objection.

3 So from my perspective, this is what he thought. He  
4 shared it. We've already performed, you know, the  
09:56:44 5 foundation. It was his voice on the video. The statement  
6 is appropriate. I'm going to ask him, Did you say that to  
7 Mr. Momchilov?

8 If he says yes, we're done.

9 But, of course -- frankly, Mr. Gilbert and Ms. Greene  
09:56:56 10 submitted voir dire questions about suicide by cop in this  
11 case.

12 MR. GILBERT: Oh, come on.

13 MR. DOWNEY: I mean, the fact that we're not  
14 arguing a suicide by cop, that's what he said.

09:57:05 15 MR. GILBERT: Did we?

16 MR. DOWNEY: You did. You did.

17 MR. GILBERT: But it was ob- --

18 MS. GREENE: And they were not used --

19 THE REPORTER: I can't hear you.

09:57:13 20 MS. GREENE: Those questions were not used  
21 when we got to present the actual case. They were not in  
22 the final set submitted to the Court to use in this case  
23 with Judge Baughman.

24 THE COURT: What is really at issue here is  
09:57:24 25 what these policemen knew, and they had none of this -- they

1 had none of this information. This is after the fact. What  
2 his opinion is is after the fact.

3 I'm going to sustain the objection.

4 MR. DOWNEY: Thank you.

09:57:48 5 (End of sidebar discussion.)

6 (Proceedings resumed in open court.)

7 MR. DOWNEY: No additional questions,  
8 Your Honor.

9 THE COURT: Mr. Garber, thank you for your  
09:58:01 10 testimony. You may step down.

11 Call your next witness, please.

12 MS. WILLIAMSON: Thank you, Your Honor.

13 Defense would like to call Officer Michael Beasley  
14 next.

09:59:39 15 DEPUTY CLERK: Please raise your right hand.

16 Do you solemnly swear that your testimony in this case  
17 will be the truth, the whole truth, and nothing but the  
18 truth, so help you God?

19 THE WITNESS: I do.

09:59:46 20 DEPUTY CLERK: Please have a seat.

21 THE WITNESS: Thank you.

22 DIRECT EXAMINATION OF MICHAEL BEASLEY

23 BY MS. WILLIAMSON:

24 Q. Good morning, Officer Beasley.

09:59:55 25 A. Good morning.

1 Q. Can you please state your name, and spell your last  
2 name for the Court.

3 A. Michael Beasley, B-E-A-S-L-E-Y.

4 Q. And where do you currently work?

10:00:06 5 A. I work for the Lexington Police Department in  
6 Lexington, Ohio.

7 Q. And how long have you worked there?

8 A. This year, it will be 16 years full time. Altogether,  
9 19 years.

10:00:17 10 Q. And were you working for Lexington PD on  
11 March 16, 2014?

12 A. Yes, I was.

13 Q. Did you receive a call to respond to the Garber  
14 residence on that day?

10:00:31 15 A. Yes.

16 Q. And can you tell us about that?

17 A. We received a call from Mutual Aid to assist the  
18 Richland County Sheriff's Office with a domestic violence  
19 complaint at the Garber residence.

10:00:46 20 Basically, when I got there, Brian Garber had already  
21 left the scene, and we spent just several minutes searching  
22 the area, trying to locate them.

23 Q. When you say we spent several minutes, who else was  
24 searching for Brian Garber?

10:01:02 25 A. Deputies as well.



1 Q. Deputies from where?

2 A. Richland County.

3 Q. And did you go into the house at all?

4 A. No. Not the initial call.

10:01:14 5 Q. And what happened -- you mentioned you looked for  
6 Brian Garber.

7 What happened next?

8 A. We were unable to locate him. So I secured from  
9 there, and went back on patrol within the Village of  
10:01:29 10 Lexington.

11 Q. At some point later that evening, did you receive an  
12 additional call to go out to the Garber residence?

13 A. Yes. My dispatch had advised that Richland County was  
14 back in route to his parents' house, and he was located at  
10:01:43 15 the parents' house, and he had a firearm.

16 Q. And what did you do upon receiving that information?

17 A. We stood by at the Village limits, which basically  
18 borders the Garbers' property, and waited for  
19 Richland County to arrive. And once they arrived, we  
10:02:03 20 proceeded up the driveway with them.

21 Q. And when you say "We stood by," who were you with at  
22 that time?

23 A. I was with my supervisor, Captain Troy Weaver.

24 Q. Okay. And you said Richland County Sheriff's officers  
10:02:21 25 arrived.

1 And then what you did do?

2 A. Well, Captain Weaver and I were, I think, the last two  
3 there. Like I said, we followed them up the driveway. So  
4 they had already gone inside. We were the last two to get  
10:02:35 5 into the house, as far as I can recall.

6 And at that point -- actually, Captain Weaver beat me  
7 in the house. I was getting a rifle out of my cruiser, and  
8 when I came inside, he was already at the base of the  
9 stairs.

10:02:50 10 I had seen, I believe, Matt Garber, Brian's father, in  
11 one of the rooms on the first floor of the house. I told  
12 him he needed to get out of the house.

13 At that point, I heard somebody from upstairs say that  
14 Brian had a gun, and I heard a bunch of -- I don't know  
10:03:11 15 which deputies, but a bunch of deputies speaking, trying to,  
16 basically, talk him down and get him to surrender the  
17 firearm. And then I heard a bunch of shots being fired.

18 Q. Do you remember anything specific that you heard?

19 A. The only specific thing I heard, and I don't know  
10:03:32 20 which deputy said it, was, We all have families. You don't  
21 need to do this.

22 Something along those lines.

23 Q. And where were you when you heard this?

24 A. I was at the base of the stairs leading to the second  
10:03:47 25 floor.

1 Q. And you mentioned that you heard shots fired?

2 A. Yes.

3 Q. What did you do after that?

4 A. After that, I escorted Matt Garber out of the

10:03:57 5 residence and into -- there was a Belleville officer

6 outside. I handed him over to the Belleville officer, and

7 told him to take him across the street to Brian's residence.

8 Q. Okay.

9 MS. WILLIAMSON: Just one moment, Your Honor.

10:04:29 10 Thank you, Officer Beasley.

11 I don't have anything further at this time.

12 THE WITNESS: Thank you.

13 THE COURT: Any cross-examination?

14 CROSS-EXAMINATION OF MICHAEL BEASLEY

10:04:38 15 BY MR. DOUGLAS:

16 Q. Hello, Officer Beasley.

17 Your testimony was that at the time of the shooting,  
18 you were at the bottom of the stairs?

19 A. Yes, sir.

10:04:45 20 Q. Okay. So you weren't in the room at the time shots  
21 were fired, were you?

22 A. No, I was not.

23 Q. Okay. So you don't know what happened, or what

24 transpired, in that room in the moments just prior to the

10:04:55 25 shooting, do you?

1 A. No, I do not.

2 MR. DOUGLAS: Nothing further.

3 THE COURT: Any redirect?

4 MS. WILLIAMSON: No, Your Honor.

10:05:01 5 THE COURT: Officer, thank you for your  
6 testimony. You may step down.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MS. WILLIAMSON: Thank you, Your Honor.

10:05:35 10 We would like to call the defendant,  
11 Deputy Jeff Frazier, next.

12 DEPUTY CLERK: Raise your right hand, please.

13 Do you solemnly swear that your testimony in this case  
14 will be the truth, the whole truth, and nothing but the  
10:05:44 15 truth, so help you God?

16 THE WITNESS: I do.

17 MS. WILLIAMSON: Your Honor, we've had a  
18 request for a brief break here before Frazier.

19 THE COURT: We have?

10:06:09 20 MS. WILLIAMSON: Yes.

21 THE COURT: All right. As I said, thank you  
22 for the reminder.

23 We will take a 15-minute break.

24 MS. WILLIAMSON: Thank you.

10:06:17 25 THE COURT: We're in recess until --

1 DEPUTY CLERK: All rise.

2 THE COURT: -- 10:20.

3 - - -

4 (The jury exited the courtroom.)

10:24:10 5 (Proceedings in recess at 10:06 a.m. )

6 - - -

7 DEPUTY CLERK: All rise.

8 THE COURT: Mr. DeVan, bring back the jury.

9 DEPUTY CLERK: All rise for the jury.

10:24:37 10 - - -

11 (Proceedings reconvened at 10:24 a.m. )

12 (In Open Court - Defendant and Jury Present)

13 - - -

14 DEPUTY CLERK: Please be seated.

10:26:07 15 THE COURT: Officer Frazier, you may retake  
16 the stand.

17 DIRECT EXAMINATION OF RAYMOND JEFFREY FRAZIER

18 BY MS. WILLIAMSON:

19 Q. Good morning, Deputy Frazier.

10:26:28 20 A. Good morning.

21 Q. How long did you work for the Richland County  
22 Sheriff's Office?

23 A. 17 years.

24 Q. And when did you retire?

10:26:36 25 A. Last year, September 30th of 2018.

1 Q. Why did you retire?

2 A. Last year tomorrow, I had a heart attack, and followed  
3 by quadruple bypass the next day.

4 Q. Are you currently working now?

10:26:54 5 A. I am not, no.

6 Q. Do you have plans to return to law enforcement work?

7 A. I -- the last week of May -- or I'm sorry.

8 The last week of April, first week of May, I'm going  
9 to start at NC State in Mansfield, teaching at the academy.

10:27:11 10 Q. And what academy is that?

11 A. North Central State Academy.

12 Q. What will you be teaching?

13 A. I'm certified in about 25 different topics, ranging  
14 from patrol tactics, report writing, evidence collection,  
10:27:23 15 suspect approaches, booking. Matters of that. Basic police  
16 duties.

17 Q. During your employment with the Richland County  
18 Sheriff's Office, did you receive any commendations or  
19 awards?

10:27:35 20 A. Several, yes.

21 Q. Would you explain for the jury what some of those  
22 awards and commendations were?

23 A. I was deputy of the year 2003, 2005, and 2007.

24 I have ten-plus office citations awards for above and  
10:27:54 25 beyond the call of duty. It's the highest achievement level

1 you can get on a local level.

2 Numerous office merit awards for -- it's basically for  
3 investigative cases, resolving and concluding investigative  
4 cases.

10:28:15 5 I have -- I'm a Medal of Honor winner.

6 I have three Lifesaving Awards, two from the  
7 Richland County Sheriff's Office and one from the State of  
8 Ohio.

9 Q. Can you tell us a little bit about those Lifesaving  
10:28:29 10 Awards?

11 A. The two from Richland County -- all three of the  
12 Lifesaving Awards were for doing CPR and resuscitating  
13 persons that had cardiac arrests.

14 Q. At your time at the Richland County Sheriff's Office,  
10:28:44 15 did you hold any special assignments?

16 A. Yes.

17 Q. And what were those?

18 A. I was a member of the ASORT, Allied Special Operations  
19 Response Team, for 7 years. On that team, I was an entry  
10:28:56 20 man, and then I went up to a level of rifleman, which is a  
21 precision rifle operator.

22 After that, I was with the United States Marshals  
23 Fugitive Task Force. I was on the Richland County Drug Task  
24 Force. And I was a K9 officer for five years.

10:29:16 25 Q. Did you have to receive any special training for any

1 of those assignments?

2 A. Yes.

3 Q. And what training did you receive?

4 A. For the -- to be on the SWAT team back in 2003, we had  
10:29:27 5 to go down to the Ohio Peace Officer Training Academy in  
6 London, Ohio, and we spent ten days down there, 16-hour  
7 days.

8 Miami-Dade Police Department from Florida came up.  
9 Their SWAT team came up and put on a tactical course of your  
10:29:44 10 basic SWAT duties. Building entries, repelling, munitions,  
11 and then all weapons certifications.

12 Q. And going back to when you first became a law  
13 enforcement officer.

14 What training did you receive to become a law  
10:29:58 15 enforcement officer?

16 A. I graduated the academy in 1996, and it's a basic  
17 police academy. I believe back at that time, it was  
18 somewhere around 570 hours, course hours, you had to take to  
19 become an officer. And, again, that's all basic police  
10:30:17 20 duties, from how to handle calls to writing reports to  
21 submitting evidence to driving, defense tactics, firearms.

22 Q. And beyond the academy, did you receive additional  
23 training during your years at the Richland County Sheriff's  
24 Office?

10:30:34 25 A. Yes. Yearly, we have what we call Continued



1 Professional Training that's required through the State of  
2 Ohio through the Ohio Peace Officer Training Academy. That  
3 training can be anywhere from legal updates for the year,  
4 all the way up to firearms qualifications, defense tactics,  
10:30:51 5 driving, certifications, TASER, OC, baton.

6 Q. Deputy Frazier, during your 17 years with the  
7 Richland County Sheriff's Office, how many times have you  
8 had to use deadly force?

9 A. Twice.

10:31:10 10 Q. And how did that affect you?

11 A. Well, it's -- it's the -- it's the absolute hardest  
12 thing you'll have to do in your lifetime as a police  
13 officer.

14 Their faces are seared in your memory forever. I see  
10:31:42 15 these people every day, and it's not something that  
16 just -- you just move on from. You live with it for the  
17 rest of your life.

18 Q. Deputy Frazier, did you believe Brian Garber was a  
19 threat to your life on March 16, 2014?

10:31:58 20 A. Absolutely, I did. 100 percent.

21 MS. WILLIAMSON: Just one moment, Your Honor.

22 I have nothing further, Your Honor.

23 THE COURT: Cross-examination?

24 MR. GILBERT: Yes.

10:32:25 25 We just need one second -- two seconds.

1 CROSS-EXAMINATION OF RAYMOND JEFFREY FRAZIER

2 BY MR. GILBERT:

3 Q. You indicated just now that you believe Brian Garber  
4 was a threat to your life; is that correct?

10:33:14 5 A. Yes, sir.

6 Q. You have said, though, in your testimony in this  
7 trial, that you did not feel the need to use deadly force  
8 until after 45 to 50 seconds in that room, correct?

9 A. That's correct, yes, sir.

10:33:42 10 Q. Okay. And your testimony on Tuesday was that Brian  
11 lifted his shirt with his left hand.

12 MS. WILLIAMSON: Objection, Your Honor.  
13 Beyond the scope.

14 THE COURT: I'm going to overrule that. Your  
10:33:55 15 last question opened up some reasonable inquiry concerning  
16 the events of -- the evening of the death.

17 MS. WILLIAMSON: Your Honor, may I have a  
18 sidebar?

19 THE COURT: Brief.

10:34:11 20 (Discussion held at sidebar, as follows:)

21 THE COURT: Your witness.

22 MS. WILLIAMSON: Yes.

23 Your Honor, I would like to put our position on the  
24 record, and have a continuing objection here. I'd also like  
10:34:29 25 to --

1 THE COURT: You may. You may.

2 MS. WILLIAMSON: -- to further have this  
3 argument: I believe this is clearly outside of the scope in  
4 Rule 611(b).

10:34:36 5 He was asked if he -- what he felt in the room. That  
6 was it. There was nothing about what he saw, what he did.

7 Mr. Garber -- or sorry.

8 Mr. Gilbert has had ample opportunity to put on his  
9 case in direct. This -- it's beyond the scope. This is --

10:34:55 10 THE COURT: Mr. Gilbert?

11 MR. GILBERT: Yeah.

12 Your Honor, we anticipated this was going to happen  
13 because they asked the same question to  
14 Lieutenant Nicholson.

10:35:07 15 They didn't confine just the commendations, training,  
16 experience, and all that. They brought up the actual  
17 shooting incident, and asked him if he was in fear of his  
18 life.

19 This is the central theme in this case. I think I  
10:35:23 20 have a right to cross-examine and clarify some issues. I'm  
21 not going to be that long. But they opened the door, I  
22 think.

23 MS. WILLIAMSON: I don't --

24 THE COURT: Here's my ruling: I'm overruling  
10:35:37 25 your objection. I'll give you a continuing objection.

1 But I want to make it clear.

2 The question was, Did you fear for your life?

3 Why he feared for his life is dilatory.

4 MR. GILBERT: Okay.

10:35:49 5 THE COURT: But going beyond that is not.

6 So confine your questioning to what facts made him  
7 fear for his life.

8 MR. GILBERT: Okay.

9 THE COURT: That was the question, and you are  
10:36:01 10 entitled to inquire.

11 That's my ruling.

12 MR. DOWNEY: Thank you, Your Honor.

13 (End of sidebar discussion.)

14 (Proceedings resumed in open court.)

10:36:15 15 BY MR. GILBERT:

16 Q. Mr. Frazier, you indicated on Tuesday, as part of your  
17 belief that you feared for your life, that Brian lifted his  
18 shirt with his left hand, correct?

19 A. That's correct, sir.

10:36:41 20 Q. And you also said that you saw a dark object in his  
21 hand; is that correct?

22 A. That's correct, sir.

23 Q. And then you heard a pop, and you responded with fire;  
24 is that correct?

10:36:53 25 A. That's also correct, yes.

1 Q. Now, on November 6th, 2014, you prepared a written  
2 statement regarding the shooting incident, along with your  
3 lawyer, correct?

4 A. That's correct, yes, sir.

10:37:09 5 Q. And in that statement, you said that you observed  
6 Brian as he sat back on the bed, and started to lean forward  
7 in a hurried manner; is that right?

8 A. That's right, yes.

9 Q. That was part of your fear of -- that your life was in  
10:37:28 10 danger?

11 A. No, not necessarily.

12 Q. It wasn't?

13 A. No.

14 Q. Then why did you put it in your statement?

10:37:32 15 A. Because it was part of the action.

16 Q. You also said that he lifted his shirt slightly with  
17 his fingers of his left hand, correct?

18 A. That's correct, yes.

19 Q. And you said that with his right hand, he pulled out  
10:37:45 20 what appeared to be a firearm from under his shirt, correct?

21 A. I believe I said that, yes.

22 Q. And you said that he extended his right hand toward  
23 you, correct?

24 A. I believe that I said that as well.

10:37:57 25 Q. And it was at that point that you heard a pop, right?

1 A. I don't recall it in that order, no.

2 Q. I'm not asking you in order.

3 Did you say, and it was at that point that you heard a  
4 pop, after he extended his right hand towards you?

10:38:11 5 A. I don't recall that, no.

6 Q. Would you like to read your statement?

7 A. I believe what you're seeing.

8 Q. And that you only fired your weapon after -- after you  
9 observed Garber start to lift his shirt and present what  
10 appeared to you to be a weapon, correct?

10:38:25 11 A. I believe my testimony was that I returned fire after  
12 I heard a pop.

13 Q. Did you say in the written statement you prepared with  
14 your lawyer that you only fired your weapon after you  
10:38:37 15 observed Garber start to lift his shirt and present what  
16 appeared to you to be a weapon?

17 A. If that's what you have in front of you, I'm not going  
18 to deny it.

19 Q. Okay. And you sat through this trial, and you heard  
10:38:51 20 your colleagues, Knee and Nicholson, say they never saw  
21 anything come out of his shirt, right?

22 A. Yes, I did.

23 Q. Okay. So what they're saying and what you're saying  
24 are two things different, right?

10:39:07 25 A. Different officer perception.

1 Q. You were all in the same room, correct?

2 A. Different perceptions from different angles.

3 Q. Okay. So on November 6th, the same day you wrote this  
4 statement with your lawyer and presented it to the  
10:39:23 5 authorities, you provided a video-recorded interview  
6 concerning the shooting, correct?

7 A. That's correct as well, yes.

8 Q. And in that video-recorded interview, you said that  
9 Brian brought his entire hand out of his shirt eventually?

10:39:41 10 A. Eventually --

11 Q. Do you remember that?

12 A. Eventually, yes.

13 Q. And you said that as he was pulling it out, you heard  
14 the pop?

10:39:51 15 A. My explanation of that is, is when --

16 Q. Did you say that?

17 A. I believe so. If it's on the tape, yes.

18 Q. Okay. That's all I asked you.

19 A. Okay.

10:39:59 20 Q. Did you say that?

21 A. Yes.

22 Q. Okay. Did you say that as you were firing at him, he  
23 was not dying?

24 A. Yes, I did say that.

10:40:09 25 Q. And you said that the whole hand comes out, and you

1 continue to fire; is that right?

2 A. That is correct, yes.

3 Q. And you said that you saw something dark in his hand,  
4 right?

10:40:21 5 A. That's also correct, yes.

6 Q. And you said you saw an object in his hand, correct?

7 A. That is also correct.

8 Q. And you heard your colleagues, who testified in the  
9 trial that they didn't see anything like that, correct?

10:40:33 10 A. Yes.

11 Q. Okay. So that was November 6th, 2014.

12 Then, on December 17th, 2015, you gave testimony under  
13 oath in a deposition in this case, correct?

14 A. That's correct, yes.

10:40:54 15 Q. We've gone over some of that with you.

16 A. Yes.

17 Q. Okay. And in that deposition, you testified that you  
18 did not see an arm or hand come out of Brian's shirt,  
19 correct?

10:41:07 20 A. If that's what's in the testimony, then, yes, that's  
21 what I said.

22 Q. That contradicts what you said November 6th, 2014,  
23 rite?

24 A. My perception at the time I was giving a statement,  
10:41:20 25 yes.



1 Q. Okay. And you testified you never saw Brian point a  
2 firearm towards you other than from under his shirt,  
3 correct?

4 A. If that's what that says, yes.

10:41:30 5 Q. Okay. You don't deny you said that, right --

6 A. No, I'm not --

7 Q. -- on December 17th, 2015?

8 A. I'm not going to deny that, no.

9 Q. Okay. And you also said on December 17th, in the  
10:41:41 10 course of this litigation where you are a defendant, that  
11 you never saw Brian extend his arm.

12 A. Say that one more time.

13 Q. You testified that you never saw Brian extend his arm,  
14 correct?

10:41:55 15 A. I don't recall that.

16 Q. And you testified that you did not ever see him lift  
17 his shirt and present a firearm to you, in that deposition?

18 A. I don't recall that either.

19 Q. Okay. And you testified that you did not ever see  
10:42:14 20 Brian brandish what you thought looked like a firearm,  
21 correct?

22 A. I believe you're twisting my words.

23 Q. I'm reading it right from the deposition.

24 And I'll show it to you.

10:42:24 25 A. I don't --

1 Q. No problem.

2 A. I don't recall saying that.

3 Q. Okay. And you testified that you never actually saw  
4 an object in Brian's hand, correct?

10:42:32 5 A. I don't recall that either.

6 Q. And you testified that you did not see Brian with a  
7 gun, right?

8 A. Yes, I did testify to that. Yes.

9 Q. And you testified that whatever was in Brian's hand,  
10:42:45 10 it was only -- it was only under his shirt?

11 A. I believe so, yes.

12 Q. Okay. And you don't think that contradicts what you  
13 said earlier on November 6, 2014; is that right?

14 A. Answering questions as they're being asked.

10:43:00 15 Q. Is that right?

16 A. Yes.

17 Q. Okay.

18 MR. GILBERT: Let's bring up the deposition.

19 Exhibit 2, Your Honor.

10:43:18 20 BY MR. GILBERT:

21 Q. I want you to read this -- I want you to read this to  
22 the jury, which is, line -- page 55, line 11.

23 A. Do you want me to start at 11?

24 Q. Yes.

10:43:44 25 A. Or you just want me to read 11?

1 Q. Read it out loud so the jury can hear it.

2 A. Number 11: "Question: Before the pop, did you see  
3 his arm or hand come out the area of the shirt?"

4 Q. What's your answer?

10:43:56 5 A. "I did not."

6 Q. Go to the next question.

7 A. "Question: Did you ever see his hand come out of that  
8 shirt?"

9 Q. Answer?

10:44:09 10 A. "No."

11 Q. Next question.

12 A. "Did you ever see him point a gun at you?"

13 Q. Answer?

14 A. "Just what I perceived to be a gun underneath his  
10:44:19 15 shirt."

16 Q. "Question: Did you ever see him extend his arm?"

17 A. Do you want me to read the next one?

18 Q. Read the answer.

19 A. "No, sir."

10:44:30 20 Q. "Question: Did you ever see him lift his shirt and  
21 present a firearm to you?"

22 A. "No, sir."

23 Q. Did you -- the next question, go ahead, read it.

24 A. It says, "Did you ever see Brian brandish what you saw  
10:44:46 25 was -- looked like a gun?"

1 Q. Answer?

2 A. "No, sir."

3 Q. Next page.

4 And it reads what, that first question?

10:44:56 5 A. "So you never saw him with an object in his hand?"

6 Q. And I then asked, "Visibly?"

7 A. "I did not see him with a gun, no."

8 Q. And then I asked you, "Or an object?"

9 And what was your answer?

10:45:14 10 A. "I did not see any objects in his hand. Whatever he  
11 had was underneath his shirt."

12 Q. Okay. Mr. Frazier, you were under oath on  
13 December 17th, 2015, where you testified under penalties of  
14 perjury?

10:45:46 15 A. That's correct, yes.

16 Q. Okay. Right?

17 A. Yes.

18 Q. And you're under oath at this time?

19 A. That's correct, yes.

10:45:53 20 Q. And you're sworn to tell the truth when you're under  
21 oath; is that correct?

22 A. That's true, yes.

23 Q. So which version is the truth in this case?

24 A. I've told you the truth.

10:46:07 25 Q. We'll let the jury decide that.

1 MR. GILBERT: Thank you very much.

2 THE WITNESS: You're welcome.

3 THE COURT: Redirect?

4 MS. WILLIAMSON: Yes, Your Honor.

10:46:15 5 REDIRECT EXAMINATION OF RAYMOND JEFFREY FRAZIER

6 BY MS. WILLIAMSON:

7 Q. Deputy Frazier, you've given a lot of statements over  
8 the course of the past five years in this case.

9 A. Four or five, yes.

10:46:37 10 Q. And I'd like to make sure you have the opportunity to  
11 tell the story about what happened.

12 MS. WILLIAMSON: Can you quickly pull up the  
13 deposition transcript that was just pulled up, page 55.

14 BY MS. WILLIAMSON:

10:46:50 15 Q. Looking at the answers that you read here.

16 "Did you ever see" --

17 I'm looking at line 20.

18 "Did you ever see him lift his shirt and present a  
19 firearm to you?"

10:47:25 20 Your answer was, "No, sir."

21 Can you explain that answer?

22 A. I've never seen a gun, ever. I've never testified  
23 that I've ever saw a gun.

24 Q. And did you ever see the whole object come out of his  
10:47:38 25 shirt?

1 A. No.

2 Q. What did you see when you looked at Brian Garber as he  
3 was seated on that bed?

4 A. An object under his shirt that appeared to be a  
10:47:49 5 firearm.

6 Q. And did you see Brian Garber move?

7 A. Yes.

8 Q. Explain what you saw.

9 A. He leaned back, leaned forward, lifted his shirt with  
10:48:01 10 his left hand. I seen what perceived to be a firearm. I  
11 heard a pop. I returned fire.

12 Q. And when you say you saw what you perceived to be a  
13 firearm, what do you mean?

14 A. I seen a black object. I didn't see the whole object.  
10:48:15 15 It looked to be a firearm underneath his shirt. I perceived  
16 it to be a firearm.

17 Q. Can you describe the shape of that object?

18 A. About this long. About that wide. And it looked like  
19 the barrel of a firearm sticking out of his shirt -- or  
10:48:32 20 sticking in his shirt.

21 Q. And why did you fire your weapon?

22 A. Because I was scared to death. I thought I was going  
23 to be shot.

24 MS. WILLIAMSON: One moment, Your Honor.

10:48:45 25 Nothing further.

1 THE COURT: Officer, thank you for your  
2 testimony.

3 MR. GILBERT: Can we have a redirect?

4 THE COURT: I'm not going to permit it.

10:48:57 5 MR. GILBERT: You're not?

6 THE COURT: Denied.

7 Officer, you may step down.

8 You meant recross.

9 MR. GILBERT: I'm not going to argue with the  
10:49:08 10 Court.

11 THE COURT: All right. Thank you for that,  
12 Mr. Gilbert.

13 Call your next witness.

14 MS. WILLIAMSON: Yes, Your Honor.

10:49:16 15 We'd like to call Deputy Andrew Knee.

16 DEPUTY CLERK: Raise your right hand, please.

17 Do you solemnly swear that your testimony in this case  
18 will be the truth, the whole truth, and nothing but the  
19 truth, so help you God?

10:49:24 20 THE WITNESS: Yes, sir. I do.

21 DIRECT EXAMINATION OF ANDREW KNEE

22 BY MS. WILLIAMSON:

23 Q. Good morning, Deputy Knee.

24 A. Good morning.

10:50:20 25 Q. I know you've already been here and already testified

1 before this jury. I don't intend to revisit all of your  
2 testimony, but I do have some areas of inquiry this morning.

3 A. Yes, ma'am.

4 Q. In your prior testimony, you described the shape of  
10:50:34 5 the object under Brian Garber's shirt as a distinct  
6 rectangular shape. And I believe you demonstrated for the  
7 jury the approximate inches in length of that.

8 Was that description of the object based on your own  
9 personal observations of the object that night?

10:50:53 10 A. Yes, that was based on my own personal observations  
11 that night.

12 Q. Did any other officer tell you how to describe that  
13 object?

14 A. No, they did not.

10:51:01 15 Q. Did you believe that that object was a firearm?

16 A. Yes, I did.

17 Q. Going back to the room that night.

18 I'd like for you to describe for the jury what was  
19 going through your mind during the interaction with  
10:51:21 20 Brian Garber.

21 A. At the time our interaction was going on, ladies and  
22 gentlemen, I honestly believed at any moment in time, I was  
23 going to take a round in the head. That was the main  
24 thought that was going through my head the whole time that  
10:51:35 25 we were doing this.



1 Now, was deadly force justified at that point in time,  
2 before we heard the bang? Yes, it was.

3 Did I choose to do that immediately? No.

4 My fellow officers were doing the best they possibly  
10:51:49 5 could to try and deescalate the situation and talk him down,  
6 and I attempted to let them do so, to the best of their  
7 ability.

8 Q. Deputy Knee, how many times have you had to use deadly  
9 force in your career?

10:52:00 10 A. This is the only incident in my career where I've had  
11 to.

12 Q. And how has this impacted you?

13 A. It's a great tragedy that it had to work out this way.  
14 It really is. But at the end of the day, I did my job, and  
10:52:15 15 I did what I had to do at the given time.

16 MS. WILLIAMSON: Thank you, Deputy Knee.

17 THE COURT: Any cross-examination?

18 MS. GREENE: Yes, Your Honor.

19 CROSS-EXAMINATION OF ANDREW KNEE

10:52:34 20 BY MS. GREENE:

21 Q. Deputy Knee, you are not on trial today, are you?

22 You're not a defendant in this case today?

23 A. No, ma'am.

24 Q. And on March 16th, 2014, you never saw Brian pull up  
10:52:53 25 his shirt, did you?

1 A. No, ma'am.

2 MS. WILLIAMSON: Objection. Scope.

3 THE COURT: Overruled.

4 BY MS. GREENE:

10:52:58 5 Q. And on that date, you never saw Brian lean forward and  
6 extend his right hand, correct?

7 A. No, ma'am.

8 Q. And on that date, you never saw him pull out from  
9 under his shirt an object, did you?

10:53:10 10 A. No, ma'am.

11 Q. You never saw a dark object in his hand, correct?

12 A. That's correct.

13 Q. And you never saw him move his arms at the time of the  
14 shooting, right?

10:53:18 15 A. That's correct.

16 Q. You did not see him throw anything?

17 A. That's correct.

18 Q. You shot because you heard a bang, correct?

19 A. That's correct.

10:53:26 20 Q. And you were sure that bang was a gunshot?

21 A. At the time, that's what I believed it was.

22 Q. And you did not feel the need to shoot until you heard  
23 that bang, correct?

24 A. That's correct.

10:53:37 25 Q. And Frazier shot before you, right?

1 A. Yes.

2 Q. Sometime after the shooting, you heard that it was not  
3 a gun under Brian's shirt, but instead, it was a remote,  
4 correct?

10:53:48 5 A. That's correct.

6 Q. But when you were in that bedroom, you did not see the  
7 remote on the bed, did you?

8 A. That's correct.

9 MS. WILLIAMSON: No further questions.

10:53:56 10 THE COURT: Any redirect?

11 MS. WILLIAMSON: No, Your Honor.

12 THE COURT: Officer Knee, thank you for your  
13 testimony. You may step down.

14 THE WITNESS: Thank you, Your Honor.

10:54:15 15 MR. DOWNEY: Your Honor, that's defense's last  
16 witness.

17 THE COURT: Defense rests?

18 MR. DOWNEY: Yes, Your Honor.

19 THE COURT: All right.

10:54:21 20 Ladies and gentlemen of the jury, the defendant has  
21 now concluded its case in chief. There are some matters  
22 that I need to discuss with counsel.

23 It's 10:54, and I will want to speak to you briefly  
24 about how we're going to proceed from here. So I'm going to  
10:54:43 25 have Mr. DeVan take you back to the jury room. And after

1 I've had discussions with counsel, we'll bring you back, and  
2 talk about what's going to happen going forward.

3 Again, I want to thank you for your attention and for  
4 your service.

10:54:59 5 DEPUTY CLERK: All rise.

6 (The jury exited the courtroom.)

7 THE COURT: We'll wait until Mr. DeVan gets  
8 back, and then discuss going forward.

9 The first order of business will be defendants'  
10:56:19 10 exhibits.

11 Do you need some time to consult before you present  
12 your exhibits?

13 MR. DOWNEY: Thank you, Your Honor.

14 Just a minute or two.

10:56:27 15 (Pause in proceedings.)

16 THE COURT: All right.

17 MR. DOWNEY: Defendants are ready, Your Honor.

18 THE COURT: You may proceed.

19 MS. WILLIAMSON: Thank you, Your Honor.

11:00:44 20 We don't have much.

21 Can you hear?

22 THE COURT: There we go.

23 MS. WILLIAMSON: Okay.

24 THE COURT: All right.

11:00:54 25 MS. WILLIAMSON: Defendants' Exhibit 1001.

1 And then we have just the limited portion that was  
2 identified of Defendants' Exhibit -- Defendants'  
3 Exhibit 1006. Just the portion that was played in Court.

4 And for Defendants' Exhibit 1013, again, just the  
11:01:32 5 limited portion that was played in Court.

6 Oh, I'm sorry. I think I misspoke.

7 It wasn't Defendants' Exhibit 1006. I believe it was  
8 Defendants' Exhibit 1003, the 911 recording.

9 THE COURT: 1001, 1003 --

11:02:00 10 MS. WILLIAMSON: Yes.

11 THE COURT: -- 1006?

12 MS. WILLIAMSON: Not 1006. I apologize. I  
13 misspoke.

14 THE COURT: All right. So it's 1001 and 1003?

11:02:12 15 MS. WILLIAMSON: And 1013.

16 THE COURT: 1013?

17 MS. WILLIAMSON: Yes. And those will be just  
18 the -- those last two, just the limited portions that were  
19 identified by the witnesses and played for the jury.

11:02:28 20 THE COURT: All right.

21 Let's start with 1013.

22 This was the one where there was the transcript?

23 MS. WILLIAMSON: Yes.

24 THE COURT: It would seem to me that for  
11:02:39 25 purposes of the jury, if it can be verified that the

1 transcript -- because it's very limited portions -- if it  
2 can be verified that the transcript is an accurate  
3 transcription, then merely those two portions, which would  
4 be a redaction, would be easier for the jury to handle back  
11:03:00 5 in the jury room.

6 MS. GREENE: Judge, plaintiff does object to  
7 the admission of that exhibit because it's hearsay. It was  
8 used for impeachment, and the witness was here to testify.

9 THE COURT: Well, I'm going to admit it. It's  
11:03:20 10 very short. But I'd prefer to do it by transcript, unless  
11 the transcription is defective. So there's going to have to  
12 be a review to make sure that it is.

13 And this 1003, again, technically, how is the jury  
14 going to handle that, if they want to hear it?

11:03:45 15 MS. WILLIAMSON: That one, we have just the  
16 clips. We could --

17 THE COURT: You just have the clip.

18 MS. WILLIAMSON: We just have the clip of what  
19 was played.

11:03:52 20 THE COURT: All right. So what kind of  
21 technology would the jury need to hear it?

22 MS. WILLIAMSON: Do you -- oh, I mean, we  
23 could -- if they ask for it, we could, you know, provide a  
24 laptop that would allow them to hear the recording, the clip  
11:04:11 25 of it.

1 MR. GILBERT: Judge, I hate to go back to  
2 Evidence 101, but you cannot introduce prior inconsistent  
3 statements where the -- where the witness said, That's him  
4 there. It's his voice.

11:04:38 5 I mean, he admitted it. And then he comes up with an  
6 explanation.

7 You can't actually bring in the impeachment document,  
8 or statement, as an independent exhibit.

9 THE COURT: Which one are you -- which one are  
11:04:59 10 you talking about now? Which exhibit?

11 MR. GILBERT: Any of them. Any of those  
12 recordings.

13 THE COURT: Well, 1003 is the audio call of  
14 the 911, right?

11:05:12 15 MR. GILBERT: Well, they only played a certain  
16 portion of it.

17 THE COURT: Well, and that's all they want to  
18 introduce.

19 MR. GILBERT: I'm talking about the interview  
11:05:20 20 of Mr. Garber, and the 911 call, too.

21 MS. WILLIAMSON: It's already been admitted.

22 MR. DOWNEY: It's already been admitted.

23 THE COURT: Well --

24 MR. GILBERT: Nothing has been admitted.

11:05:30 25 MR. DOWNEY: The Judge --

1 MS. WILLIAMSON: The Judge --

2 MR. DOWNEY: -- he already made a ruling.

3 THE COURT: Well, the 911 call was  
4 information --

11:05:36 5 MR. GILBERT: Right.

6 THE COURT: -- that was available prior to the  
7 incident. So I don't see a problem with that.

8 And then --

9 MS. GREENE: Judge, if we could just put on  
11:05:46 10 the record that we object to the admission of these two  
11 particular exhibits, 1003 and -- or 1013, or any portions  
12 thereof, as hearsay, completely excluded under the Hearsay  
13 Rules 801 and 802.

14 Thank you.

11:06:02 15 THE COURT: All right. So you're talking  
16 about, again, your objection goes to 1003 and 1013, correct,  
17 the portions?

18 MS. GREENE: Yes, Judge.

19 THE COURT: All right. I'm going to overrule  
11:06:21 20 that.

21 But I do have some concerns about the form in which  
22 they're going to be presented to the jury, if they choose to  
23 want to review those two exhibits.

24 MS. WILLIAMSON: We do have --

11:06:37 25 MR. DOWNEY: We have a transcript of the 911



1 call as well.

2 THE COURT: You do?

3 MR. DOWNEY: Yeah. That could be redacted to  
4 just that portion that was played.

11:06:51 5 MS. WILLIAMSON: Or we can make a computer  
6 available --

7 THE COURT: All right. Well, again --

8 MS. WILLIAMSON: -- if it's asked for.

9 THE COURT: -- the question -- I've overruled  
11:06:56 10 the objection.

11 The question is the accuracy of the transcription.

12 I'd prefer they have the text. And if, in fact, it's  
13 a fair and accurate transcription, then that's how it should  
14 go in.

11:07:13 15 If not, then we have a different problem.

16 MR. GILBERT: Well, in light of that, we could  
17 go over it.

18 MR. DOWNEY: We think it's accurate,  
19 Your Honor.

11:07:21 20 MR. GILBERT: We can go over it and make sure.

21 THE COURT: All right. And I'm not asking you  
22 to waive your objection, just --

23 MR. GILBERT: No. No.

24 Thank you.

11:07:28 25 THE COURT: All right. So -- all right.

1 Well, that leaves us with where we're going forward.

2 And I believe this is in my trial order, but I

3 instruct the jury before closing argument.

4 So we're going to need a charge. And I told you that

11:07:47 5 I would have you meet to see if you could agree on a charge.

6 We've also been working on a charge to take a look at what

7 you gave us in light of where we are in the trial.

8 And why don't we do that over the lunch hour. And

9 hopefully -- hopefully -- we can have a charge ready this

11:08:10 10 afternoon, and go ahead and charge of jury.

11 I'm inclined to give you a half an hour -- each side a

12 half an hour for their clothing arguments, so -- yes.

13 Oh, and I'm going to give them the stipulations, too,

14 when they -- before I give them the charge.

11:08:32 15 Thank you, Mr. DeVan.

16 MR. DOWNEY: Your Honor, if I may.

17 Are we going to close today or tomorrow?

18 THE COURT: Well, that's the question. It

19 depends on how long it takes to get a charge.

11:08:43 20 And, obviously, here's the problem: If I'm going to

21 give them the charge, and then you're going to argue, so

22 that there's some contemporaneous context for that, it may

23 very well be it's just better to come back tomorrow and do

24 the whole thing. And I think we can have it all done in the

11:08:59 25 morning.

1 MR. DOWNEY: I think that's right, Your Honor.  
2 That would be the defense perspective.

3 THE COURT: How do you feel about that from  
4 the plaintiff's side?

11:09:05 5 MR. GILBERT: I think we agree for that.

6 THE COURT: All right. So we can let the jury  
7 go for the day? We can let the jury go for the day, and  
8 have them come back tomorrow?

9 MR. GILBERT: Well, we can stay around here.

11:09:19 10 MR. DOWNEY: Right. We can --

11 THE COURT: Well, you have to stay around  
12 here. You have to come up with a charge.

13 MR. DOWNEY: That's what we agree on.

14 THE COURT: We all have some work to do here  
11:09:24 15 before we move on.

16 MR. DOWNEY: Right.

17 THE COURT: But that way we have the rest of  
18 the day to give it our best efforts. And if I have to come  
19 up with my own decision with respect to some of this stuff,  
11:09:37 20 I will.

21 MR. DOWNEY: Thank you, Your Honor.

22 THE COURT: It goes without saying.

23 All right.

24 MR. DOWNEY: We'd also like to renew our  
11:09:44 25 motion to dismiss under Rule 50 at the close of the defense

1 case.

2 THE COURT: Okay. And we can do that. We'll  
3 put that -- we'll put that on the record before -- after I  
4 send the jury --

11:09:57 5 MR. DOWNEY: Great.

6 Thank you, Your Honor.

7 THE COURT: -- after I send -- dismiss the  
8 jury for the day.

9 All right. So just so that we're clear, number one,  
11:10:06 10 we're going to dismiss the jury for the day. We're going to  
11 tell them that they'll be back first thing in the morning.

12 At that time, they will receive the stipulations, the  
13 instructions from the Court, and they will hear closing  
14 argument, and they will deliberate.

11:10:21 15 And then we'll have your motion on the record, and  
16 then we'll recess and work on the charge.

17 MS. WILLIAMSON: Thank you.

18 MR. DOWNEY: Thank you, Your Honor.

19 THE COURT: Bring back the jury, Mr. DeVan.

11:11:41 20 DEPUTY CLERK: All rise for the jury.

21 (The jury entered the courtroom.)

22 DEPUTY CLERK: Please be seated.

23 THE COURT: Members of the jury, you have now  
24 heard all the testimony that's going to be presented in this  
11:12:22 25 case, and the attorneys in the Court now need to meet and

1 work on final instructions for the jury before you  
2 deliberate.

3 I've consulted with counsel, and we believe that it's  
4 in the best interest of making sure that we have complete  
11:12:41 5 and proper instructions, that we take the rest of the day  
6 working on that task. And so, therefore, I am going to  
7 release you for the day and have you come back tomorrow,  
8 reporting at 8:30 to begin at 9:30.

9 Now, at that time, you will hear stipulations of fact,  
11:13:04 10 facts that the parties have agreed to. I will give you my  
11 instructions, and then you will hear closing arguments from  
12 counsel for both sides.

13 Following closing argument, then, you will deliberate  
14 for purposes of reaching your verdict in this case.

11:13:28 15 So it appears that you will start deliberating in the  
16 morning. I'll let you know, just for purposes of your  
17 planning, that while you're deliberating, you do receive  
18 lunch. So we'll bring it in, and you won't have to go out.

19 And hopefully by the end of the day -- although, you  
11:13:51 20 don't have to, if you're not at that point -- you'll have a  
21 verdict. But you take as long as you need in order to come  
22 back with a verdict in this case.

23 I do want to admonition you, again, that you are not  
24 to communicate with anyone about the case, even your fellow  
11:14:14 25 jurors.

1 I assure you you'll have a full opportunity to discuss  
2 this case with your fellow jurors after the case has been  
3 submitted for your deliberations.

4 And, once again, remind you about restrictions on  
11:14:33 5 using the Internet, social media, for purposes of  
6 communicating about the case with anyone or doing any  
7 independent research or inquiry. That's strictly  
8 prohibited. So as curious as you may be, given all that  
9 you've heard, please stay away from the Internet as it  
11:14:57 10 relates to this case.

11 Does anybody on the jury have any questions before I  
12 let you go for the day?

13 (No response.)

14 THE COURT: All right. Again, thank you for  
11:15:05 15 your attention. Thank you for your service. We'll see you  
16 tomorrow morning, and we'll proceed with the case at that  
17 time.

18 DEPUTY CLERK: All rise.

19 - - -

11:15:10 20 (Jury excused for the day at 11:15 a.m.)

21 - - -

22 MR. DOWNEY: If we may, defense moves, once  
23 again, for judgment as a matter of law under Rule 50, and  
24 renew the qualified immunity motion filed on behalf of  
11:16:21 25 Deputy Frazier as the plaintiff's claims.

1 And note specifically to the Court that there's no  
2 evidence presented at trial of conscious pain and suffering  
3 or emotional damages for Brian Garber, and we would move to  
4 dismiss that claim as well.

11:16:34 5 THE COURT: Again, your motion is denied.

6 However, you reserve the right to make it again after  
7 the jury returns its verdict. And so if you're so disposed  
8 to do so, we'll hear it again at that time.

9 MR. DOWNEY: Thank you, Your Honor.

11:16:49 10 THE COURT: Did you want to say something,  
11 Mr. Gilbert?

12 MR. GILBERT: I'll leave it.

13 THE COURT: All right.

14 MR. GILBERT: I'll put my foot in my mouth,  
11:17:03 15 maybe.

16 MR. DOWNEY: Please talk, Terry.

17 MS. WILLIAMSON: Yeah. Yeah.

18 THE COURT: All right. The Court is in recess  
19 until 1:00.

11:17:11 20 MR. DOWNEY: Thank you, Your Honor.

21 MS. WILLIAMSON: Thank you.

22 THE COURT: Oh, the other thing I'll mention  
23 to you is, of course, you'll need to assemble all of those  
24 exhibits because they will go back to the jury room.

11:17:23 25 So get your exhibits together. And you're going to

1 talk about these audio exhibits, and whether they can be put  
2 in some kind of a written form.

3 And then I want you to inspect the entire package,  
4 consisting of plaintiff's exhibits and defendants' exhibits,  
11:17:43 5 and then I will have you certify on the record that these  
6 are the exhibits that have been admitted. So . . .

7 MR. DOWNEY: Thank you, Your Honor.

8 MR. GILBERT: Thank you.

9 MR. DOWNEY: And should we be working on the  
11:17:54 10 jury instructions now as well?

11 THE COURT: Right.

12 MR. DOWNEY: Okay. We'll do that.

13 THE COURT: And as I say, you may not be  
14 finished by 1:00, but we got the rest of the afternoon.

11:18:07 15 MR. DOWNEY: Thank you, Your Honor.

16 MS. WILLIAMSON: Thank you.

17 MR. DOWNEY: Your Honor, can we have  
18 Deputy Frazier excused for the day?

19 THE COURT: He may be excused.

11:18:52 20 MR. DOWNEY: Thank you, Your Honor.

21 - - -

22 (Proceedings in recess at 11:18 a.m. )

23 DEPUTY CLERK: All rise.  
24  
25



1

- - -

2

(Proceedings reconvened at 1:24 p.m.)

3

(In Open Court - Jury Not Present)

4

(Defendant Present)

13:24:03

5

- - -

6

DEPUTY CLERK: Please be seated.

7

THE COURT: At my request, counsel have been

8

meeting in an effort to come up with an agreed set of

9

instructions for the jury, and I understand that except with

13:24:23 10

one matter, they have agreed.

11

So I'll hear first from the plaintiff.

12

MS. GREENE: Yes, Judge.

13

One matter in regard to the credibility instruction we

14

have a disagreement about, and then I know defendants plan

13:24:41 15

to raise one other issue in relation to survivorship

16

damages.

17

With regard to the credibility instruction, the

18

instructions we have provided are identical, other than one

19

paragraph at the end of plaintiff's version, which makes

13:24:56 20

clear that testimony of a police officer is entitled to no

21

special or exclusive sanctity over that of another witness

22

with regard to credibility.

23

So we ask that that paragraph be included.

24

MS. WILLIAMSON: Your Honor, our instruction

13:25:09 25

is the instruction that was provided to us on credibility

1 from Judge Polster.

2 We -- the inclusion of the last paragraph is  
3 prejudicial to the defendants, and further, the sentiment of  
4 that instruction is already covered. We have an  
13:25:27 5 instruction -- I think it's the third instruction -- which  
6 includes that all persons are equal under the law. And it's  
7 also covered in the credibility instruction itself. I don't  
8 feel like we need this other last paragraph here.

9 In terms of -- should I go on to the other?

13:25:47 10 THE COURT: No. Let's just deal with that  
11 one.

12 MS. WILLIAMSON: Sure.

13 THE COURT: As I told counsel off the record,  
14 I have been reviewing the instructions given in a similar,  
13:25:59 15 although, not identical case, *Smith versus Jones*,  
16 1:13-cv-744, which was tried to a verdict before  
17 Judge Oliver, and I want to see what kind of credibility  
18 instruction he gave.

19 As I read his instruction, he doesn't say anything  
13:26:30 20 about classes of persons, singling out anyone for caution  
21 regarding weight to be assigned.

22 Is it really necessary to do that?

23 MS. GREENE: Judge, we believe that the other  
24 instruction that Ms. Williamson referenced does generally  
13:27:10 25 state that witnesses -- or all people are all equal under

1 the law.

2 But we do believe that it's important to note,  
3 specifically with regard to police officers, that their  
4 testimony is not afforded at a greater weight than other  
13:27:23 5 witness, because that does manifest itself often in the way  
6 people hear accounts given by law enforcement. And we would  
7 just like to ensure that the jury is instructed that that  
8 testimony is equal.

9 THE COURT: Well, I did question the jurors on  
13:27:39 10 voir dire about whether they could be fair, impartial, and  
11 not give weight to a police officer just because he was a  
12 police officer. And all of the jurors who were selected  
13 indicated that they could.

14 I'm going to omit that. It wasn't given in -- it  
13:28:12 15 wasn't given in *Smith*, and you indicate that Judge Polster's  
16 standard instructions don't include that with the Court.  
17 That's his standard civil instruction. That doesn't  
18 necessarily mean that they're --

19 Or did he give them to you in the context of -- did he  
13:28:26 20 say these are the ones that he would give in this case?

21 MS. WILLIAMSON: He gave them to us in the  
22 context of this case.

23 THE COURT: Well, is this just his general  
24 set.

13:28:33 25 I know he has a general set of jury instructions.

1 MS. WILLIAMSON: It may have been his general  
2 set.

3 THE COURT: All right. I'm going to not  
4 include that.

13:28:45 5 MS. WILLIAMSON: Thank you, Your Honor.

6 MS. GREENE: Thank you.

7 THE COURT: All right. So let's go on to the  
8 issue of wrongful death damages.

9 MS. GREENE: Survivorship damages.

13:28:53 10 THE COURT: Survivorship damages, yes.

11 MS. WILLIAMSON: Yes, Your Honor.

12 As we have argued twice on our Rule 50 motion  
13 regarding the no -- essentially, no evidence of conscious  
14 pain and suffering, we believe that that should be removed  
15 from the instructions. That would be in the instruction  
16 for -- I believe, it's the damages one, generally. It's in  
17 there, and then it's also in the survivorship.

18 THE COURT: There was a survivorship  
19 instruction given in *Smith versus Jones*.

13:29:26 20 MS. GREENE: Judge, yes, there was. I  
21 think it's--

22 THE COURT: And I believe that -- I believe  
23 that under Ohio law, it is appropriate to -- there doesn't  
24 need to be any specific evidence in order for them to  
13:29:46 25 consider that.

1 MS. GREENE: Judge, if I can just briefly  
2 respond.

3 Defendant Frazier did testify today that he had  
4 previously stated that as he was shooting at Brian Garber,  
13:29:59 5 he was not dying, and so he kept shooting.

6 So we do believe that that is in the record and would  
7 ask that that provision remain in the instructions.

8 THE COURT: Can I see the instruction that  
9 you've been working off of.

13:30:23 10 MS. GREENE: I have it in electronic form.

11 DEPUTY CLERK: Can you put it on the monitor  
12 or --

13 MS. GREENE: Oh, actually, yeah, we probably  
14 could.

13:30:32 15 THE COURT: You can do that.

16 And while you're doing that, I'm going to show you  
17 what I had marked up from *Smith*, which is an instruction  
18 that I'm comfortable giving, if it makes any sense.

19 Mr. DeVan, you want to give a copy of this to each  
13:31:11 20 side.

21 It's -- what was numbered in that case is Number 20 on  
22 page 28. And the markup is mine.

23 MS. GREENE: So the parties --

24 THE COURT: This is *Smith versus Jones*, yes.

13:32:05 25 MS. GREENE: Judge, no. This is the very

1 instruction --

2 THE COURT: This is basically what I came up  
3 with.

4 MS. GREENE: -- that we've been working on.

13:32:10 5 Okay.

6 THE COURT: What you have on the screen.

7 All right. So I am comfortable with giving that  
8 instruction, and I will give that instruction.

9 All right. So with respect to the credibility,  
13:32:33 10 there's going to be no particular reference to law  
11 enforcement officers. And I'm going to give the instruction  
12 as it appears on the screen, which is essentially the  
13 instruction that I came up with after reviewing *Smith versus*  
14 *Jones*.

13:32:53 15 MR. DOWNEY: Thank you, Your Honor.

16 And, again, we agree as to form. Our only objection  
17 was with respect to --

18 THE COURT: It's an objection to content.

19 MR. DOWNEY: Right.

13:33:04 20 THE COURT: All right.

21 So do you have a unified document?

22 MS. GREENE: Yes, we do, Judge.

23 THE COURT: Is it in PDF form.

24 MS. GREENE: It's in Word document form. I

13:33:14 25 can --

1 THE COURT: Word document form.

2 All right. You can arrange with Ms. Kassel to get it  
3 down to her, and then we'll have that prepared and have a  
4 copy for each of you to review before it's given tomorrow at  
13:33:27 5 the beginning of court.

6 MS. GREENE: The one remaining issue, then, is  
7 also the verdict form we reviewed while we were working on  
8 these, the version from the *Smith v Jones* case. And I  
9 believe -- correct me if I'm wrong, Ms. Williamson -- but  
13:33:40 10 that in form and substance we agree.

11 And I think that you probably reserve your exception  
12 with the survivorship issue. But otherwise --

13 THE COURT: All right. So there is a verdict  
14 form attach to this document.

13:33:52 15 MS. GREENE: There isn't currently, but we can  
16 very quickly type it up.

17 MS. WILLIAMSON: Yeah.

18 THE COURT: Okay. All right.

19 MS. WILLIAMSON: And we have just -- as  
13:33:59 20 Ms. Greene noted, like, the same objection to the inclusion  
21 of the language of conscious pain and suffering.

22 THE COURT: All right. So once we get it  
23 finalized, then you can put that objection --

24 MS. WILLIAMSON: Sure.

13:34:10 25 THE COURT: -- on the record, just to make

1 sure that we're on the same page.

2 MS. WILLIAMSON: Thank you.

3 THE COURT: And I would appreciate it if for  
4 tomorrow you would have the exhibits ready to go as have  
13:34:21 5 been admitted.

6 And if you want to merely take your list and highlight  
7 the ones that are being admitted, your individual lists.

8 MS. GREENE: Judge, I believe both parties  
9 have already prepared the exhibits for the jury, and  
13:34:37 10 inspected each other's --

11 THE COURT: Right. Okay. So that's good.  
12 You've inspected it. But I'm looking for just -- for  
13 purposes of the record, to just have a -- just have a list  
14 of exhibits as admitted.

13:34:51 15 And if you merely want to highlight which ones are  
16 being admitted on the -- on your exhibit list, that's fine,  
17 or you can do a separate one. It's up to you. I just want  
18 to have that for the record, though.

19 MS. WILLIAMSON: Your Honor, just one thing I  
13:35:11 20 wanted to note for the exhibits.

21 We did do the transcript for the 911 call. We were  
22 not able to do the transcript for the BCI one. We watched  
23 it, and it was determined that it wasn't identical to the  
24 language. So we have put that on a PDF -- not on a PDF.  
13:35:28 25 I'm sorry -- on a flash drive. We have indicated the start



1 and stop time.

2 And the parties have asked if, in fact, the jury asks  
3 for that to played, obviously, they're going to need a  
4 laptop to do that.

13:35:41 5 THE COURT: We'll provide it.

6 MS. WILLIAMSON: But would the parties be able  
7 to be back there so that there could be assurance that they  
8 only watch the portion --

9 THE COURT: That's fine. We can bring them in  
13:35:51 10 the courtroom, and they can watch it here.

11 MS. WILLIAMSON: Okay.

12 THE COURT: You know, no comment. Just they  
13 watch it, and that's it. But only if they request it.

14 MS. WILLIAMSON: Thank you, Your Honor.

13:35:56 15 THE COURT: All right.

16 Is that good?

17 MS. GREENE: Thank you, Your Honor.

18 THE COURT: All right. Do we have any other  
19 issues to resolve before going in tomorrow?

13:36:02 20 The one thing I did want to ask, and I forgot to bring  
21 out my copy, proximate cause has been stipulated, and I  
22 don't recall whether that's been included in your  
23 stipulation of facts.

24 MS. GREENE: Judge, I don't believe it was in  
13:36:17 25 the version that was submitted prior to the start of the

1 trial.

2 THE COURT: All right. Could we put that in  
3 there so that when I read it, I'll have it. Again, you'll  
4 have to agree on it, how you want to word that, but . . .

13:36:32 5 And so I take it there's no -- there's no instruction  
6 on proximate cause.

7 If there is, we don't need one, do we?

8 MS. GREENE: There is one currently, I guess,  
9 with the stipulation. We actually got to take that out.

13:36:52 10 THE COURT: Okay. Well, you can take a look  
11 at what I gave you there. I incorporated a reference to  
12 probable cause in the elements for the Section 1983.

13 Let me find out. Let me identify the page for you.

14 Yes. That's on page 20.

13:38:01 15 All right. So if you could make those changes as  
16 appropriate, we'll go over those tomorrow to make sure we're  
17 all on the same page.

18 And I'm grateful for your work and for the agreement  
19 that you reached.

13:38:16 20 MR. DOWNEY: Thank you, Your Honor.

21 THE COURT: That moves it along.

22 MS. GREENE: Thank you.

23 THE COURT: And perhaps will give you a chance  
24 tonight -- well, you have closing arguments. 30 minutes.

13:38:27 25 30 minutes a side.

1 MR. GILBERT: And that's for both.

2 THE COURT: Yes. If you reserve time for  
3 rebuttal out of the 30.

4 MR. GILBERT: Thank you.

13:38:35 5 THE COURT: Okay. So we should be able to get  
6 this case to the jury before noon. They will be provided  
7 lunch, so they'll be able to work through lunch, should they  
8 choose to do so. They won't have to leave the jury room.

9 And hopefully by the end of the day we'll have a  
13:38:53 10 verdict, and if not, we'll be back on Monday.

11 Anything for the plaintiff?

12 MR. GILBERT: Nothing further.

13 THE COURT: Anything further on behalf of  
14 defendant.

13:39:03 15 MR. DOWNEY: Nothing, Your Honor.

16 Thank you.

17 THE COURT: There being no further before the  
18 Court this afternoon, we are now in recess.

19 DEPUTY CLERK: All rise.

13:39:57 20 - - -

21 (Proceedings adjourned at 1:39 p.m.)

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/s/ Donnalee Cotone 21st of April, 2019  
DONNALEE COTONE, RMR, CRR, CRC DATE  
Realtime Systems Administrator